CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

ST/20078/2019-SM

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-767-2018 dated 21/09/2018 passed by Commissioner of Central Tax , COCHIN(Appeal)]

E M Mani Constructions Pvt Ltd
36/71 Kottai Canal Road Off Lissie Hospital
COCHIN - 682018
KERALA

Appellant(s)

VERSUS

Commissioner Of Central Tax & Central Excise, Cochin
C.R. Buildings, I.S Press Road
Cochin - 682018
Kerala

Respondent(s)

Appearance:

Mr. Abraham Markos, Advocate
JOSEPH & KURIYAN
42/2260, PROVIDENCE ROAD
KOCHIN - 682018
KERALA

For the Appellant

Mr. K. B. Nanaiah, Superintendent (AR)

For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20611 / 2019

Date of Hearing: 31/07/2019
Date of Decision: 31/07/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 21.9.2018 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant and upheld the order of the lower authority in rejecting the refund claim of Rs.41,00,129/-.

2. Briefly the facts of the present case are that the appellants are engaged in providing civil construction service / works contract service to various parties. They filed a refund claim of Rs.41,00,129/- on the basis of 23 copies of challans vide which they have paid the service tax. The lower authority found that out of 23 copies of the challans, 21 challans were hit by limitation and rejected them as time barred. The present appeal relates to refund of Rs.6,04,500/- in respect of two challans bearing No.1279 and 1273.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order rejecting the refund claim of Rs.6,04,500/- is not sustainable in law as the same has been passed without properly appreciating the evidence on record. He further submitted that disputed refund has been rejected only on the ground that the incidence of tax has been passed on to the service receiver. He also submitted that in support of his submission that the incidence of tax has not been passed on to the service recipient, the appellant furnished the certificate of Chartered Accountant who after verifying the records, has certified that incidence of tax has not been passed on to the service recipient. He also submitted that Chartered Accountant certificate cannot be rejected without any proper evidence to the contrary. In support of this submission, he relied upon the following decisions:

- ***Jyoti Sarup Mittal vs. CCE: 2017 (3) GSTL 478 (Tri.-Del.)***
- ***Interplex India Pvt. Ltd. vs. CC: 2013 (290) ELT 386 (Tri.-Ahmd.)***
- ***M.B. Enterprises vs. CCE: 2013 (292) ELT 451 (Tri.-Ahmd.)***
- ***CCE vs. Empee Sugar & Chemicals Ltd.: 2007 (211) ELT 293 (Tri.-Bang.)***

5. On the other hand, the learned AR defended the impugned order and submitted that the Commissioner (A) has given detailed reasons for rejection of the refund claim. He further submitted that the Commissioner (A) has observed that the lower authorities have verified the books of

accounts and the documents relating to building constructed for various parties and categorically held that the appellant has collected the service tax from each of their clients and therefore, they are not entitled to the refund.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the only ground on which the appellant has filed the present appeal is that the Doctrine of Unjust Enrichment is not applicable in the present case because they have not passed on the incidence of service tax to the service recipient and they are relying upon the certificate issued by the Chartered Accountant which has been ignored by the Commissioner (A) in the impugned order. Further, I find that the Commissioner (A) in para 9 of the impugned order has observed that the original authority has verified the books of accounts and all the documents relating to building contracts and has found that the appellant has collected the service tax from their clients. In view of this categorical finding of the Commissioner (A) that incidence of service tax has been passed on to the service recipient, I am of the view that the present claim is hit by Doctrine of Unjust Enrichment. Here it is pertinent to reproduce the relevant finding of the Commissioner (A) which is recorded in para 9 which is reproduced herein below:

> *"9. The appellant has stated that the adjudicating authority ought to have found that the incidence of tax paid by the appellant was not passed on to any other person and that the bar of unjust enrichment contained in Section 11B(2) of the Central Excise Act, 1994, did not apply to the case of the appellant. However, it is seen that the lower authority has verified the books of accounts and document relating to building constructed to M/s. Muthoot Hosptials, Muthoot Medical Centre and M/s. Ashtapadi Foundations, Cochin and the lower authority has come to the conclusion that from the copies of the contract/work order, statement of accounts and abstract of invoices raised on clients and that appellant has collected Service Tax from each of the said clients. Further, the Chartered Accountant certificate produced by the appellant is contrary to the findings of the lower authority as stated above and is not acceptable in the instant case. Hence, it appeared that the*

amount claimed as refund was not liable to be refunded to the appellant since the incidence of Service Tax had been passed on to the other persons. Since the claim is hit by doctrine of unjust enrichment, the claim is liable to be rejected."

7. In view of the categorical finding of the Commissioner (A), I am of the view that there is no infirmity in the impugned order which is upheld by dismissing the appeal fo the appellant.

(Operative portion of the Order was pronounced in Open Court on **31/07/2019.**)

S.S GARG
JUDICIAL MEMBER

rv...